

## EQUALITY IMPACT ASSESSMENT RESULTS

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>The National Health Service (Scotland) Act 1978 (Independent Health Care) Modification Order 2024 (“the Modification Order”)</b>  <b>The Public Services Reform (Scotland) Act 2010 (Commencement No.8) Order 2024 (“the Commencement Order”)</b>  <b>The Healthcare Improvement Scotland (Inspections) Amendment Regulations 2024 (“the Inspection Regulations”)</b>  <b>The Healthcare Improvement Scotland (Fees) Regulations 2024 (“the Fees Regulations”)</b>	
<b>Minister</b>	<b>Minister for Public Health and Women’s Health</b>	
<b>Lead official</b>	<b>Lorraine Alcock</b>	
<b>Officials involved in the EQIA</b>	<b>Name</b>	<b>Team</b>
	<b>Lorraine Alcock Robert Law</b>	<b>Quality &amp; Safety Team</b>
<b>Directorate: Division: Team</b>	<b>Directorate of the Chief Operating Officer, NHS Scotland Healthcare Quality and Improvement Safety, Openness, and Learning</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>Revision to existing legislation</b>	

### ***Summary of aims and desired outcomes of policy***

1. Enabling HIS to regulate independent clinics where services are provided by pharmacists and pharmacy technicians.
2. Giving HIS power to de-register independent healthcare providers who fail to pay continuation fees.
3. Enabling HIS to regulate independent medical agencies, including online-only independent medical providers registered as a business in Scotland.
4. Allow inspectors, authorised by HIS under section 10K of the National Health Services (Scotland) Act 1978, to inspect medical records.

5. Will enable HIS, under Section 10Z5 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), to be able to prescribe the maximum fees which HIS may impose in respect of any Independent Healthcare providers they regulate.

## ***Executive summary***

There is no available data or evidence on the impact these amendments would have on people with protected characteristics in Scotland. However, bringing forward the package of Scottish Statutory Instruments is intended to benefit all users of independent health care services in Scotland, regardless of background, circumstances or location.

## ***Background***

The Scottish Government is looking to make changes in relation to the provisions in the National Health Service (Scotland) Act 1978 that cover Healthcare Improvement Scotland’s regulation of independent health care services.

For the purpose of this EQIA, the main aim of the Modification Order, the Commencement Order, the Inspection Regulations, and the Fees Regulations is to ensure that the Scottish Government meets its requirements for health care in Scotland being fit for purpose, safe, and appropriate. Where providers of independent healthcare in Scotland continue to be many and varied, along with the increasing complexity of this area of healthcare provision, we have specifically considered the impact this policy may have on members of the public, in line with how it contributes to the Health Outcomes in the Scottish Government’s National Performance Framework. This will ensure that this new policy delivers on making independent healthcare safe and focuses on positive health, care and wellbeing outcomes.

Our overall intention is that these steps will also support Healthcare Improvement Scotland (“HIS”) in their work to ensure a better-regulated healthcare sector.

In broad terms, the Modification Order, the Commencement Order, the Inspections Regulations, and the Fees Regulations make the following changes:

1. Enabling HIS to regulate independent clinics where services are provided by pharmacists and pharmacy technicians.
2. Giving HIS power to de-register independent healthcare providers who fail to pay continuation fees.
3. Enabling HIS to regulate independent medical agencies (“IMAs”), including online-only independent medical providers registered as a business in Scotland. As part of the proposal to commence HIS’ functions in relation to IMAs, the definition of IMAs will be amended to be aligned with the list of healthcare professionals in the definition of independent clinic, including the addition of pharmacists and pharmacy technicians.
4. Allow inspectors, authorised by HIS under section 10K of the National Health Services (Scotland) Act 1978, to inspect medical records. Currently, the ability to

inspect medical records as part of inspections undertaken by HIS is restricted to medical practitioners, registered nurses, pharmacists, and registered dentists.

5. Will enable HIS, under Section 10Z5 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), to be able to prescribe the maximum fees which HIS may impose in respect of Independent Medical Agencies “IMAs” (IMAs not previously included as a service in fees regulations); and raise the maximum fees which may be imposed by HIS on all independent healthcare services in respect of applications for registration or cancellation of registration of independent health care services; the annual continuation of any such registration; and applications for the variation or removal of a condition of registration. In prescribing the maximum fees, HIS will have regard to its reasonable expenses in being able to carry out its functions, as required under section 10Z5(3) of the 1978 Act.

For the purpose of the EQIA we will focus on the changes that could potentially affect the people of Scotland who will access independent health care services.

### ***Scope of EQIA***

Data on independent healthcare usage in Scotland among people with protected characteristics or other groups in Scotland is very limited. The Private Healthcare Information Network (PHIN) is an independent source of information on private healthcare in the UK and publishes data from private hospitals across the UK, it does not publish data specific to Scotland. Data from across the UK suggests that there are more female admissions than male, and there has been a drop in self-pay admission for females (9%) compared to males (4%). PHIN also tracks age distribution across the UK, with the 50-54 and 55-59 age ranges showing the largest number of admissions.

It has also not been possible to assess the usage of online medical agencies, or services provided by pharmacists and pharmacy technicians from clinics which are not registered pharmacies or premises where services are not provided under the terms of an NHS contract. In addition to the Scottish Government Library, we exhausted all avenues available to us including contacting stakeholders directly, in the search for such data.

The Scottish Government ran a public consultation from February to April 2023 which included the following question specifically consulting on the impact the proposals from the Modification Order, the Commencement Order, and the Inspections Regulations might have on people with protected characteristics:

"What are your views on how further regulation of independent health care in Scotland might affect the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex?"

At the conclusion of the consultation, 42 respondents provided a response to the above question. Of those who responded, 10 respondents felt there would be no impact, and 15 felt that further regulation would improve equity of service for those with protected characteristics. One person believed that further regulation would negatively impact the situation, and another felt that people with protected characteristics may feel discriminated against if there are restraints to them accessing a service. One respondent believed that further regulation would result in non-viable businesses being forced to close, driving people with protected characteristics to unsafe practices from non-medical companies.

Our analysis of the responses to this question show support for the Modification Order, the Commencement Order, and the Inspections Regulations. Those who responded to the question, broadly agree that the changes we have proposed will improve services for those with protected characteristics. Requiring independent healthcare providers to provide safe, consistent, and high quality services, enforced through regulation, will protect the needs of all those accessing services in a non-discriminatory manner.

### ***Key Findings***

We have been unable to identify any negative impact for any of the equality groups based on the work we have undertaken. However, recognised that due to a lack of data or evidence on who accesses independent health care services this impact assessment is limited.

As the primary focus of the package of Scottish Statutory Instruments is to ensure patient safety, we have identified a significant positive impact for all who access independent health care services regardless of their background, circumstance or location.

### ***Recommendations and conclusion***

The primary purpose of the package of Scottish Statutory Instruments is to ensure patient safety, for all who access independent health care services. Equality impact was seriously considered at all stages of planning, but it was determined that the policy is unlikely to negatively impact people with protected characteristics; any impact will be equal across the board. No changes have been made to the policy as a result of this impact analysis.

We will keep our assessment under review and update the impact assessment if new evidence comes to light.